Chad Austin, Esq. SBN 235457
3129 India Street
San Diego, California 92109
Telephone: (619) 297-8888
Facsimile: (619) 295-1401

Attorney for Plaintiff, JAMES M. KINDER

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER, Plaintiff, vs. HARRAH'S ENTERTAINMENT, Inc.; HARRAH'S OPERATING COMPANY, Inc.; HARRAH'S MARKETING SERVICES CORPORATION; HARRAH'S LICENSE COMPANY, LLC; HARRAH'S LAUGHLIN, Inc.; HBR REALTY COMPANY, Inc. and DOES 1 through 100, inclusive, Defendants.	Case No.: 07 CV 2226 DMS (AJB) **COMPLAINT FOR DAMAGES, INCLUDING PUNITIVE DAMAGES, INTEREST AND ATTORNEY'S FEES, AND FOR INJUNCTIVE RELIEF** **Violations of Telephone Consumer Protection Act of 1991** **Violations of California Civil Code § 1770 (a) (22) (A)** **Trespass to Chattel** **Unfair Business Practices**

COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges as follows:

JURISDICTION AND VENUE

1. Although Plaintiff commenced this action in the San Diego Superior Court on October 2, 2007, Defendant removed to this court on November 21, 2007, pursuant to 28 U.S.C. § § 1332 and 1441 (b). Plaintiff reserves the right to file a Motion for Remand at a later date.

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PARTIES

2. Plaintiff is, and at all times herein mentioned was, a resident of the County of San Diego, State of California.

3. Defendants, and each of them, are, and at all times herein mentioned were, business organizations doing business in the form of unlawful telemarketing in the County of San Diego, State of California to San Diego residents, including Plaintiff.

4. One of the 7 unlawful prerecorded telemarketing calls made to Plaintiff's number assigned to a paging service, which was made on December 9, 2003 at 10:19 a.m., stated that it was made on behalf of "Harrah's Rincon Casino." That casino is located in Valley Center, San Diego County, California. On information and belief, Plaintiff alleges that the Harrah's Rincon Casino is owned by the Rincon band of Mission Indians and operated by one or more of several Harrah's entities, including but not necessarily limited to Defendant HARRAH'S ENTERTAINMENT, Inc. (a Delaware corporation), Defendant HARRAH'S OPERATING COMPANY, Inc. (a Delaware corporation), Defendant HARRAH'S MARKETING SERVICES CORPORATION (a Nevada corporation) and Defendant HARRAH'S LICENSE COMPANY, LLC (a Nevada limited liability company).

5. Defendant HARRAH'S LAUGHLIN, Inc. (a Nevada corporation) owns "Harrah's Laughlin Casino." Two (2) of the unlawful prerecorded telemarketing calls complained of in this action were calls to Plaintiff's number assigned to a paging service promoting the Harrah's Laughlin Casino in Laughlin, Nevada.

6. Defendant HARRAH'S OPERATING COMPANY, Inc. owns "Harrah's Las Vegas Casino." Two (2) of the unlawful prerecorded telemarketing calls complained of in this

action were calls to Plaintiff's number assigned to a paging service promoting the Harrah's Las Vegas Casino in Las Vegas, Nevada.

7. Defendant HBR REALTY COMPANY, Inc. (a Nevada corporation) owns "Harrah's Council Bluffs Casino." One (1) of the unlawful prerecorded telemarketing calls complained of in this action was a call to Plaintiff's number assigned to a paging service promoting the Harrah's Council Bluffs Casino in Council Bluffs, Iowa.

8. One (1) of the unlawful prerecorded telemarketing calls complained of in this action was a call promoting the Harrah's Metropolis Casino in Metropolis, Illinois. Plaintiff alleges on information and belief that Defendant HBR REALTY COMPANY, Inc. owns the Harrah's Metropolis Casino.

9. On information and belief, Plaintiff alleges that Defendant HARRAH'S LICENSE COMPANY, LLC is responsible in some manner for all or at least some of the unlawful prerecorded telemarketing calls complained of in this action.

10. Plaintiff is unaware of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as herein alleged were proximately caused by their conduct.

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11. At all times herein mentioned each defendant was the partner, agent and employee of each co-defendant herein and was at all times acting within the scope of such partnership, agency and employment and each defendant ratified the conduct of each co-defendant herein.

FIRST CAUSE OF ACTION
[Violation of Telephone Consumer Protection Act of 1991]

12. Plaintiff realleges paragraphs 1 through 11 above and incorporates them herein by reference.

13. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

14. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code makes it unlawful for any person to "Make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned to a paging service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call."

15. Defendants have been calling Plaintiff's number assigned to a paging service, using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's express permission, on at least 7 occasions during the statutory period of the last 4 years, pursuant to 28 U.S.C. § 1658. These calls are only the calls known to Plaintiff at this time and Plaintiff states on information and belief, without yet having the aid of full discovery, that it is quite likely that Defendants have made many more violative calls to Plaintiff's number assigned to a paging service. These calls were not made for any emergency purpose, nor were

these calls exempt under subdivision (c) of section 64.1200 of title 47 of the Code of Federal Regulations.

16. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii). Plaintiff may obtain relief in the form of injunctive relief, or Plaintiff may recover $500.00 for each violation, or both. If the court finds that defendants' violations were willful or knowing, it may, in its discretion, award up to three times that amount.

SECOND CAUSE OF ACTION

[Violation(s) of California Civil Code § 1770 (a) (22) (A)]

17. Plaintiff realleges paragraphs 1 through 16 above and incorporates them herein by reference.

18. California Civil Code § 1770 (a) (22) (A) requires that all recorded messages disseminated within the state be introduced by a live, natural voice giving the name of the entity calling, the name of the entity being represented, an address or phone number for that entity, and asking permission to play the recording. Defendants' illegal prerecorded telemarketing calls to Plaintiff failed to comply with this requirement.

19. As a proximate result of defendants' violation of Civil Code section 1770, plaintiff has suffered and continues to suffer damages in an amount not yet ascertained, to be proven at trial.

20. Civil Code section 1780 (a) (2) provides for an injunction against future conduct in violation of Civil Code section 1770.

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21. Civil Code section 1780 (a) (4) provides for an award of punitive damages for violations of Civil Code section 1770.

22. Civil Code section 1780 (d) provides for an award of attorneys fees for plaintiffs harmed by California Civil Code §1770 (a) (22) (A) violations.

THIRD CAUSE OF ACTION
[Trespass to Chattel]

23. Plaintiff realleges paragraphs 1 through 22 above and incorporates them herein by reference.

24. The conduct by defendants complained of herein, namely calling Plaintiff's number assigned to a paging service, using an artificial or prerecorded voice, without Plaintiff's express permission, constitutes an electronic trespass to chattel.

25. At no time did Plaintiff consent to this trespass.

26. As a proximate result of these intrusions, Plaintiff suffered damage in an amount according to proof.

27. In making the illegal calls described above, defendants were guilty of oppression and malice, in that defendants made said calls with the intent to vex, injure, or annoy Plaintiff or with a willful and conscious disregard of Plaintiff's rights. Plaintiff therefore seeks an award of punitive damages.

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FOURTH CAUSE OF ACTION
[Engaging in Unfair Business Practices]

28. Plaintiff realleges paragraphs 1 through 27 above and incorporates them herein by reference.

29. Because Defendants' unlawful prerecorded telemarketing calls violated federal and California statutes, they are unlawful business practices within the meaning of section 17200 of the Business and Professions Code.

30. Section 17203 of the Business and Professions Code entitles Plaintiff to an injunction enjoining defendants from engaging in unfair or unlawful business practices.

WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as follows:

On the FIRST CAUSE OF ACTION:

1. For an award of $500.00 for each violation of 47 U.S.C. §227;
2. For an award of $1,500.00 for each such violation found to have been willful;

On the SECOND CAUSE OF ACTION:

3. For compensatory damages according to proof;
4. For preliminary and permanent injunctions, enjoining Defendants, and each of them, from engaging in activity in violation of California Civil Code §1770 (a) (22) (A);
5. For punitive damages;
6. For attorneys fees;

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On the THIRD CAUSE OF ACTION:

7. For compensatory damages according to proof;

8. For punitive damages;

On the FOURTH CAUSE OF ACTION:

9. For preliminary and permanent injunctions, enjoining Defendants, and each of them, from engaging in unfair or unlawful business practices pursuant to section 17203 of the Business and Professions Code;

On ALL CAUSES OF ACTION:

10. For attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

11. For costs of suit herein incurred; and

12. For such further relief as the Court deems proper.

DATED: , 2008

/s/ Chad Austin
Chad Austin, Attorney for
Plaintiff, JAMES M. KINDER